

PHIL GIVENS,	:	Order Docketing and Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 99-55-A
ACTING MUSKOGEE AREA	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	April 30, 1999

Appellant Phil Givens seeks review of an April 6, 1999, decision issued by the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA). Appellant filed an appeal with the Area Director under 25 C.F.R. § 2.8, which provides procedures for making the inaction of a BIA official the subject of an appeal. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

The materials which Appellant submitted with his notice of appeal show that he has tried to negotiate with the Cherokee Nation of Oklahoma (Tribe) to lease lands held in trust for the Tribe. Appellant states that he has attempted to persuade the Tribe that, as part of the compensation for leasing tribal lands, the Tribe can receive a percentage of certain payments which the United States Department of Agriculture makes to the lessee. He contends that the Tribe's failure to consider these payments in negotiating leases results in a substantial loss to the Tribe.

Appellant further argues that the Tribe does not have set policies in regard to the leasing of tribal lands, which results in inequities in the leasing process and another substantial loss to the Tribe. He also contends that the failure to have set policies has resulted in financial loss and mental anguish to him.

In his decision, the Area Director noted that the Tribe performs trust real estate services under a Self-Governance Compact. He stated that the granting of leases for tribal trust lands is a tribal business decision subject to approval by the Secretary of the Interior, and noted that there were no leases between Appellant and the Tribe pending BIA approval. The Area Director held that there was no appealable action by a BIA official, that there was no basis for an appeal under 25 C.F.R. § 2.8, and that Appellant's remedies were with the Tribe.

In his notice of appeal, Appellant contends that he has no tribal remedies because of the lack of written policies and because of the political unrest which the Tribe has recently suffered.

He argues that because BIA has oversight responsibility for tribal lands, he should have a right of appeal through the Department.

Appellant is seeking to lease tribal lands. For whatever reason, the Tribe has not leased to him. This is the Tribe's right. The Department does not have authority to lease tribal lands and cannot force the leasing of tribal lands. See 25 C.F.R. §§ 162.2; 162.3(d); Delaunay v. Billings Area Director, 33 IBIA 269, 270 (1999), and cases cited therein.

It is unfortunate that the Tribe has been experiencing political problems, but that fact does not give the Department authority that it does not otherwise have. If and when the Tribe decides to lease to Appellant, the Department will be responsible for approving that lease. Until then, Appellant's remedies are with the Tribe.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Acting Muskogee Area Director's April 6, 1999, decision is docketed but dismissed for lack of jurisdiction.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge